SUPREME COURT OF THE UNITED STATES.

1828.

No. ~~116~~. 40.

WILLIAM A. BRADLEY, PLAINTIFF IN ERROR,

VERSUS

THE WASHINGTON, ALEXANDRIA, AND GEORGETOWN STEAM PACKET COMPANY.

ERROR FROM THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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DISTRICT OF COLUMBIA, *sct.*

Style of Court.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of November, being the twenty-fifth day of the same month, in the year of our Lord one thousand eight hundred and thirty-three, and of the independence of the United States of America the 58th:

Were present:

The hon'ble { WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON, & JAMES S. MORSELL, } *Assistant Judges.*
HENRY ASHTON, Esquire, *Marshal.*
WILLIAM BRENT, *Clerk.*

In the record of proceedings of the same court, among others, are the following, to wit:

THE WASHINGTON, ALEXANDRIA, AND GEORGETOWN STEAM PACKET COMPANY, *vs.* WILLIAM A. BRADLEY. } Parties.

Issuing capias. Be it remembered that, heretofore, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and thirty-one, the said plaintiffs, by Richard S. Coxe, esquire, their attorney, prosecuted and sued forth out of the circuit court here, the United States writ of capias ad respondendum, directed to the marshal of the district aforesaid, in the words and figures following, to wit:

DISTRICT OF COLUMBIA, *to wit:*

"*The United States of America, to the Marshal of the District of Colambia, greeting*:

Capias. We command you, that you take Wm. A. Bradley, late of Washington county, if he shall be found within the county of Washington, in your said district, and him safely keep, so that you have his body before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the first Monday of December, instant, to answer unto the Washington, Alexandria, and Georgetown Steam Packet Company, in a plea of trespass on the case, and so forth.

Hereof, fail not, at your peril, and have you then and there this writ.

Witness, W. Cranch, esquire, chief judge of our said court at the City of Washington, the 9th day of November, Anno Domini one thousand eight hundred and thirty-one.

Issued the 2d day of December, 1831.

WM. BRENT, *Clerk.*

December term, 1831. At which said first Monday of December, in the year of our Lord one thousand eight hundred and thirty-one, being the day of the return of the aforegoing writ, comes into the circuit court, the said plaintiffs, by their attorney aforesaid. And the marshal, to whom the writ in form aforesaid was directed, makes return thereof to the court here, thus endorsed, to wit:

Marshal's return. "Cepi HENRY ASHTON, *Marshal.*"

Defendant's appearance. And the said William A. Bradley being called, appears in court here, by Joseph H. Bradley, esquire, his attorney, and thereupon the said William A. Bradley, by his said attorney, prays that the said plaintiffs may declare against him, the said defendant, in the plea aforesaid: whereupon, it is ruled by the court here, that the said plaintiffs declare against the said defendant, in the plea aforesaid; and if the said plaintiffs do not declare against the said defendant, in

Rule nar.

the plea aforesaid, judgment will be rendered against them by default. And the said plaintiffs, by their attorney aforesaid, prays leave of the court here, to imparle until the first Monday of May next, to declare against the said defendant, in the plea aforesaid, and he hath it. The same day is given to the said defendant, then, &c.

May term, 1832. At which said first Monday of May, in the year of our Lord one thousand eight hundred and thirty-two, comes into the circuit court here, as well the said plaintiffs, by their said attorney, as the said defendant, by his said attorney: whereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of said parties, by their attorneys aforesaid, and by order of the court here, is continued until the fourth Monday of November next.

November term, 1832. At which said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-two, comes again into the circuit court here, as well the said plaintiffs as the said defendant, by their attorneys aforesaid: thereupon, further process of, and upon, the premises aforesaid, between the parties aforesaid, by consent of said parties, by their attorneys aforesaid, and by order of court, is continued until the fourth Monday of March next.

March term, 1833. At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-three, come again into the circuit court here, as well the said plaintiffs by their said attorney, as the said defendant by his said attorney: thereupon, the said plaintiffs, by their attorney aforesaid, declare against the said defendant, in the plea aforesaid, as follows, to wit:

"DISTRICT OF COLUMBIA, *Washington County, to wit:*

Declaration. William A. Bradley, late of Washington county, was attached, to answer unto the Washington, Alexandria, and Georgetown Steam Packet Company, in a plea of trespass on the case, and so forth. And whereupon, the said plaintiffs, by R. S Coxe, their attorney, complain that, whereas, heretofore, to wit, on the 7th day of February, 1832, at the county aforesaid, was indebted to the said plaintiffs in the sum of $2,765 00 cents, for the use and hire of a certain steamboat, called the Franklin, by the said plaintiffs, before that time let to hire and delivered to the said defendant, at his special instance and request, and by the said defendant, under and by virtue of that letting to hire, before that time had and used; and being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, undertook, and then and there promised the plaintiffs, to pay them the said last mentioned sum of money, when he should be thereunto requested.

And whereas, also, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration that the said plaintiffs, at the like special instance and request of the said defendant, had before that time let to hire, and delivered to him, the said defendant, a certain steamboat, called the Franklin, and that the said defendant had, under and by virtue of the said last mentioned letting to hire, before then had and used the same, he, the said defendant, undertook, and then and there faithfully promised the said plaintiffs, to pay them so much money as they therefore reasonably deserved to have of the said defendant, when he should be thereunto afterwards requested.

And the said plaintiffs aver, that they therefore reasonably deserved to have of the said defendant, the further sum of $2,415, like money, to wit, at the county aforesaid, whereof the said defendant, afterwards, to wit, on the day and year last aforesaid, had notice; yet the said defendant, the said several sums of money herein mentioned, (although often requested) hath not paid, or any part thereof, but the same to pay, or any part thereof, has hitherto wholly refused, and still does refuse, to the damage of the plaintiffs, in the sum of three thousand dollars, current money, and therefore they bring suit, &c.

R. S. COXE, *for Plaintiffs.*

JOHN DOE & RICHARD ROE, } *Pledges, &c.*

And thereupon, the said plaintiffs, by their attorney aforesaid, prays that the said defendant may answer to the declaration aforesaid, in the plea aforesaid: whereupon, it is ruled by the court here, that the said William A. Bradley answer to the declaration of the said plaintiffs, in the plea aforesaid; and if the said defendant doth not answer to the declaration of the said plaintiffs in the plea aforesaid, judgment will be rendered against him by default, and the said defendant, by his attorney aforesaid, defends the force and injury, when, and so forth, and saith that he did not assume upon himself in manner and form as the said plaintiffs above against him hath complained, and of this he puts himself upon the county, and the said plaintiffs, in like manner, and so forth; therefore, let a jury thereon appear before the court here, on the fourth Monday of November next, by whom, &c., and who neither, &c , to recognize, &c., because as well, &c., the same day is given to the said parties then and there, &c.

Rule plea.

Venire facias.

And now, to wit, the said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-three, come again into the circuit court here, as well the said plaintiffs, as the said defendant, by their attorneys aforesaid; whereupon, for trying the issue aforesaid, it is ordered by the court here, that twenty persons be drawn, by ballot, from the pannel of petit jurors returned by the marshal to the court here; and twenty persons being so drawn, and a list of their names being furnished each of the parties, and the counsel of the parties having each stricken out four persons from the lists, thereupon the remaining twelve persons being called, come, to wit: John Adams, Thomas Beall, William Dant, William Eaton, Joseph Helm, Nathan W. Fales, Bennett Sewall, Samuel Wimsatt, Lewis Swimley, Vincent King, Alfred Mountz, and Thomas Orme, who, being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said William Bradley did assume upon himself, in manner and form as the aforesaid plaintiffs within against him have complained, and they assess the damages of the said plaintiffs, sustained by reason of the non-performance of the promise and assumption aforesaid, to the sum of two thousand four hundred and fifteen dollars, with interest from the sixth day of February, in the year of our Lord one thousand eight hundred and thirty-two. Therefore, it is considered by the court here, that the said plaintiffs recover against the said William A. Bradley, as well the sum of two thousand four hundred and fifteen dollars, with interest

November term, 1833.

Jury.

Verdict.

Damages.

Judgment.

from the sixth day of February, one thousand eight hundred and thirty-two, the damages aforesaid, by the jurors aforesaid, in form aforesaid, assessed to be sustained by occasion of the non-performance of the promise and assumption aforesaid, as the sum of thirty-four dollars seventeen cents, by the court here, unto them the said plaintiffs, on their assent adjudged for their costs and charges by them about their suit in this behalf, laid out and expended; and the said William A. Bradley in mercy, &c.

Test: WM. BRENT, *Clerk.*

Memorandum.—Before the jurors aforesaid withdrew from the bar of the court here, the said William A. Bradley, by his attorney aforesaid, filed in court here, the following bill of exceptions, to wit:

WASHINGTON, GEORGETOWN, AND ALEXANDRIA STEAM PACKET COMPANY,
vs.
WILLIAM A. BRADLEY.

Exceptions.

Plaintiffs' statement of evidence.

Upon the trial of this cause the plaintiffs, to sustain the issue on their part, joined between the parties aforesaid, gave in evidence, and read to the jury, a paper dated 19th November, 1831, signed by William A. Bradley, the said defendant, in the

Offer to hire boat.

words and figures following: viz. "I agree to hire the steamboat Franklin, until the Sydney is placed on the route, to commence to-morrow, 20th instant, at thirty-five dollars per day, clear of all expenses, other than the wages of Capt. Nevitt. 19th Nov. 1831.

W. A. BRADLEY."

And the paper purporting to be an acceptance thereof, of same date, to wit:

WASHINGTON CITY, *Nov.* 19*th*, 1831.

Acceptance of offer.

"On the part of the Washington, Alexandria, and Georgetown Steam Packet Company, I agree to the terms offered by William A. Bradley, esquire, for the use of the steamboat Franklin, until the Sydney is placed on the route to Potomac creek, which is thirty-five dollars per day, clear of all expenses, other than the wages of Capt. Nevitt, which are to be paid by our company.

W. GUNTON, *President.*

And also a paper addressed by said defendant to Pishey Thompson, one of the directors of the Steam Packet Company, and by him communicated to plaintiffs, in the words following, to wit:

WASHINGTON, *Dec.* 5, 1881.

PISHEY THOMPSON, Esq.

Letter to Pishey Thompson.

DEAR SIR: I will thank you to advise the President and Directors of Washington, Alexandria, and Georgetown Steam Packet Company, that the navigation of the Potomac being closed by ice, we have this day commenced carrying the mail by land under our winter arrangement, and have therefore no further occasion for the steam boat Franklin, which is now in Alexandria in charge of Capt. Nevitt.

The balance due your company, for the use of the Franklin, under my contract with Doct. Gunton, will be paid on the presentation of a bill and receipt therefor.

With great respect,
Your obedient servant,
W. A. BRADLEY.

PISHEY THOMPSON, Esq , Present.

And the reply thereto from William Gunton, President of the Steam Packet Company, to the defendant, in the words following, to wit:

WASHINGTON CITY, *Dec. 6th*, 1831.

Answer of Gunton.

SIR: Your letter of the 5th instant to Mr. P. Thompson, has been this afternoon submitted to the Board of Directors of the Washington, Alexandria, and Georgetown Steam Packet Company, at a meeting holden for the purpose After mentioning that the navigation of the Potomac is closed by ice, and that you had commenced carrying the mail by land, under your winter arrangement, you have therein signified you have no further occasion for the steamboat Franklin, and that she was then in Alexandria in charge of Capt. Nevitt. The agreement entered into by you contains no clause making its continuance to depend on the matters you have designated, but on the contrary an unconditional stipulation to "hire the Franklin until the Sydney is placed on the route," and I am instructed to inform you that the board cannot admit your right to terminate the agreement on such grounds, and regard it as being still in full force, and the boat as being in your charge.

However disposed the board might have been to concur with you in putting an end to the agreement, under the circumstances you have described, if the company had not been already in litigation with you and your colleague, for the recovery of a compensation for the use of the Franklin under another contract, to the strict letter of which a rigid adherence is contended for on your part, notwithstanding it had undergone a verbal modification, the board could not but recollect this, and be influenced thereby.

Yours, respectfully,
W. GUNTON, *President*.

WM. A. BRADLEY, Esq.

And further proved by the testimony of William Chicken, a competent witness, and duly sworn in the cause, that he was employed as engineer by defendant, on board the steamboat Sydney, mentioned in the foregoing papers; that said steamboat was in Baltimore in the month of November, 1831, and continued there until the 26th day of January, 1832, when she left that port for Washington City, and, after several interruptions and delays, arrived at Washington on the 6th of February, and was placed on the route to Potomac creek, on the 7th of February, 1832; and that said steamboat Sydney belonged to defendant, and that she was not finished so as to be able to start from Baltimore until the 25th of January. And thereupon, the said plaintiffs claim hire of the said steamboat Franklin, from the 20th day of November, 1831, to the 6th day of February, 1832, seventy-nine days, at $35 per day, allowing credit for $350 as paid thereon, by the said defen-

dants, and leaving a balance of $2,415; after which evidence had been given on the part of plaintiff as aforesaid.

Defendant's statement of evidence.

The defendant, to support the issue on his part above joined, offered to prove, by competent witnesses, that for several years immediately preceding the date of said contract, he had been, and was still, contractor for the transportation of the United States mail from Washington to Fredericksburg; that the customary route of said mail was by steamboat, from Washington to Potomac creek; thence by land to Fredericksburg; in which steamboat passengers were also usually transported on said route; that during all that time the defendant had used a steamboat belonging to himself on said route; that he also kept an establishment of horses and stages for the transportation of said mail, all the way by land from Washington to Fredericksburg, at seasons when the navigation of steamboats was stopped by ice; and had been obliged, for a considerable portion of every winter during the time he had been so employed in the transportation of the mail, to use his said stages and horses for the transportation of the mails, all the way by land to Fredericksburg, in the meantime laying up his steamboat. That just before the date of said contract, the defendant's own steamboat, usually employed as aforesaid on said route, had been disabled, and the defendant was at the time about completing a new steamboat, called the Sydney, which had been built at Washington, and sent round to Baltimore for the purpose of being fitted with her engine, and other equipments necessary to complete her for running on said route; and that she lay at Baltimore, in the hands of the workmen there, at the date of said contract. That on the morning of the 5th December, 1831, the navigation between Washington and Potomac creek became obstructed by ice, and the steamboat Franklin, on her way from Potomac creek to Washington, while pursuing the said route under said contract, was stopped at Alexandria by ice, where the mail was taken out of said boat and sent up to Washington by land; and that said steamboat lay at Alexandria frozen up in the harbor, from that time till the 5th February, 1832; that at the same time the navigation of the Potomac became obstructed as aforesaid, the navigation at and from Baltimore became also obstructed from the same cause, and the said steamboat Sydney was also frozen up in the basin at Baltimore, before she had been completely equipped with her engine; that at the time she was so frozen up, she wanted nothing to complete her equipment but the insertion of two pipes, a part of her engine, which pipes had been made, but not then put in place, the completing of which would not have required more than two days, and then the boat would have been in complete order for being sent round to Washington, and put upon said route; but the ice having interposed, it was deemed by the workmen, and those in charge of the boat, that the insertion of said pipes ought to be postponed till the navigation was clear; that in January, 1832, the said pipes were inserted, and the said boat being completely equipped for her voyage, left Baltimor for Washington as soon as the state of the ice made it practicable to attempt that voyage; was again stopped by the ice, and obliged to put in at Annapolis, whence she proceeded to Washington as soon as the ice left it practicable to recommence and accomplish the voyage, and arrived at Washington on the 6th February, 1832, and was the next day placed by defendant on said route; that during the whole of the period from the first stopping of the navigation as aforesaid, until the said 6th of February, the defendant had abandoned the said route to Potomac

creek, and prosecuted the land route from Washington to Fredericksburg.

2. That it was known to and understood by plaintiffs, at the time of the contract in question was made, and was a matter of notoriety, that as soon as the navigation should be closed by ice, the United States mail from Washington to Fredericksburg would have to be transported all the way by land carriage, instead of being transported by steamboat to Potomac creek, and thence by land to Fredericksburg; and that the said steamboat Eranklin would not be required by defendant, and could not be used under said contract when the navigation should be so closed.

3. That it was communicated to the plaintiff by defendant or his agent, before the time of making said contract, that defendant intended to keep said steamboat in use under said contract, so long as the navigation remained open, and no longer.

To the admissibility of which evidence the said plaintiff, by his counsel, objected, and the court refused to permit the same to go to the jury, but at the instance of plaintiffs gave the following instruction, viz.

That if the jury shall believe, from the evidence aforesaid, that the said defendant did, on the 19th day of November, 1831, write to said plaintiffs the said paper of that date, bearing his signature, and that said plaintiff did accept the same by the said paper of the same date, and that said defendant and plaintiffs did respectively write to each other the papers bearing date the 5th and 6th of December, 1831, and that the said steamboat Sydney did in fact first arrive in the Potomac river, on the 6th of February, 1832, and was placed on the route to Potomac creek, mentioned in the said evidence, on the 7th February, 1832, that then the said plaintiff is entitled to recover, under said contract so proved as aforesaid, at the rate of $35 per diem, from the said 20th November, 1831, to the said 6th of February, 1832, both inclusive.

To which refusal by the court aforesaid, to admit the evidence so offered by the said defendant, as also to the granting by the court of the said instruction aforesaid, so prayed for by the said plaintiffs, the said defendant, by his counsel, excepts and prays the court to sign this bill of exceptions, according to the statute in such case made and provided, which is accordingly done, on this 31st day of December, 1833.

W. CRANCH, [SEAL.]
JAMES S. MORSELL, [SEAL.]
Test: WM. BRENT, *Clerk.*

And whereas, afterwards, to wit, on the sixth day of January, in the year of our Lord one thousand eight hundred and thirty-four, the said William A. Bradley, the defendant aforesaid, by his attorney aforesaid, produced and filed in court here, the United States writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington, and in pursuance thereof, and according to the form and effect of the law, in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, are hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I have hereto subscribed my name, and affixed the [L. S.] public seal of said court, for the county aforesaid, this 27th day of January, 1834.

WM. BRENT, *Clerk.*

UNITED STATES OF AMERICA, *st.*

The President of the United States, to the Judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court, before you, or some of you, between the Washington, Alexandria, and Georgetown Steam Packet Company, plaintiffs, and William A. Bradley, defendant, a manifest error hath happened, to the great damage of the said William A. Bradley, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January instant, in said Supreme Court to be then and there held; and that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the hon. John Marshall, chief judge of said Supreme Court of the United States.

Issued this sixth day of January, 1834.

WM. BRENT,
Clerk Ct. Ct. District Columbia, County of Washington.

UNITED STATES OF AMERICA,

District of Columbia, Washington County, sct. To the Washington, Alexandria, and Georgetown Steam Packet Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in January instant, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein William A. Bradley is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said William A. Bradley, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the hon. William Cranch, chief judge of the circuit court of the District of Columbia, this sixth day of January, 1834.

Issued this sixth day of January, 1834.

JAMES S. MORSELL,
Assistant Judge C. Co. Dist. Columbia.

Service acknowledged by Doct. Wm. Gunton, President of the Steam Packet Company.

Test: W. BRENT, *Clerk*